
(2016) 03 GAU CK 0035
In the Gauhati High Court
Case No : WP (C) No. 4191 of 2015

Rahul Sarma

APPELLANT

Vs

State of Assam

RESPONDENT

Date of Decision : 21-03-2016

Acts Referred:

Citation : (2016) 4 GauLR 403

Hon'ble Judges : Mr. Ujjal Bhuyan, J.

Bench : Single Bench

Advocate : Mrs. D. Borgohain, Mr. N.J. Gogoi, Ms. B.Devi, Mr. M. Borgohain, Mr. Rahman, Mr. P. Chetia and Mr. S. Boiragi, Advocates, for the Appellant; Mr. B.J. Talukdar, Ms. M. Bora and Mr. M. Choudhury, Advocates, for the Respondent

Final Decision : Allowed

Judgement

Mr. Ujjal Bhuyan, J. :- Heard Mr. S Borgohain, learned counsel for the petitioners, Mr. BJ Talukdar, learned Govt. Advocate, Assam and Mr. M Choudhury, learned Standing Counsel, Directorate of Land Records and Surveys, Assam. Also heard Mr. NNB Choudhury, learned Govt. Advocate, Arunachal Pradesh.

2. 17 petitioners have joined together and have instituted the present common proceeding having identical grievance.

3. By filing this petition under Article 226 of the Constitution of India, petitioners seek quashing of the impugned communication dated 09.05.2014 of the Deputy Secretary to the Govt. of Assam, Revenue and Disaster Management (Settlement) Department debarring them from employment in the State of Assam in posts like Lot Mandal/Amin etc.

4. Facts are not in dispute. However, to put the lis in a proper perspective, a brief reference to the relevant facts is considered necessary.

5. Petitioners were nominated by Govt. of Arunachal Pradesh, Department of Land Management to undergo the Recorders" Certificate Class Course Training in

the Assam Survey and Settlement Training Centre at Guwahati. Petitioners hail from the State of Assam, but have been so nominated by the State of Arunachal Pradesh. At this stage, it may be pointed out that petitioners' nomination from the State of Arunachal Pradesh has not been questioned by any person or authority. In fact, in the course of hearing, Mr. NNB Choudhury, learned Govt. Advocate, Arunachal Pradesh did not dispute the above position. While the course was about to commence, Deputy Secretary to the Govt. of Assam, Revenue and Disaster Management (Settlement) Department wrote to the Director of Land Records and Surveys, Assam on 09.05.2014 stating that training of the candidates sponsored/deputed by the Government of Arunachal Pradesh may be started subject to the conditions mentioned therein, including the conditions that candidates under deputation from the Govt. of Arunachal Pradesh shall not be eligible for jobs like Lot Mandal/Amin etc. in the State of Assam and that in the Pass Certificate of such candidate, it should be mentioned that the certificate holder would not be entitled for jobs of Recorder/Lot Mandal/Amin etc. under the Govt. of Assam.

6. Aggrieved, the present writ petition has been filed seeking the relief as indicated above.

7. Notice in this case was issued on 31.07.2015.

8. Respondent No.4 has filed an affidavit. Stand taken in the affidavit is that passing of the six months Recorders' Certificate Class Course Training does not give a person a vested right to be appointed in the post of Mandal (Recorder) and/or Additional Mandal. It is a training course only to make the successful trainee eligible for appointment to the post of Mandal (Recorder) and/or Additional Mandal. In case of regular appointment against the notified vacancies of Mandal or Additional Mandal, there would have to be a regular selection process. Training programme in question was intended only for the educated unemployed youths of Arunachal Pradesh as per request of Arunachal Pradesh Government. As per request of the Govt. of Arunachal Pradesh, Govt. of Assam in the Revenue & Disaster Management Department granted approval to the Director of Land Records and Surveys, Assam for accommodating a batch of candidates from Arunachal Pradesh in the said course subject to payment of fees as prescribed. Accordingly, the Director wrote to the Govt. of Arunachal Pradesh on 21.03.2014 to sponsor 60 numbers of trainees for pursuing the survey and settlement training at Assam Survey and Settlement Training School, Guwahati. It is stated that the list furnished by the Govt. of Arunachal Pradesh for undergoing the training course contained a substantial number of candidates including the petitioners who are permanent residents of Assam. Referring to the two conditions incorporated in the communication dated 09.05.2014, it is stated that such incorporation was because of the directive of the Govt. of Assam in the Revenue & Disaster Management Department.

9. Learned counsel for the petitioners submits that such stipulations as mentioned in the communication dated 09.05.2014 are wholly arbitrary and

discriminatory. Candidates nominated by the Govt. of Arunachal Pradesh having undergone the training cannot be discriminated against from seeking employment in the State of Assam. Learned counsel submits that nomination of the petitioners by Govt. of Arunachal Pradesh for undergoing the training is not disputed. If that be so and as the petitioners have undergone the course, it would be wholly unreasonable to debar them from seeking employment in the State of Assam. Referring to various advertisements for appointment as Mandal, learned counsel submits that in all such advertisements one of the requirements is that the candidate should be an Indian citizen. All that is required is that a candidate should be an Indian citizen irrespective of his place of residence. Therefore, impugned stipulations are in clear violation of the constitutional requirement. He also submits that after completion of the training, barring the petitioners other trainees have been issued the certificates.

10. While Mr. NNB Choudhury, learned Govt. Advocate does not dispute recommendation of the petitioners by the State of Arunachal Pradesh, Mr. M. Choudhury, learned Standing Counsel, Directorate of Land Records and Surveys submits that in so far survey and settlement training for educated unemployed youths of Assam are concerned, a detailed selection procedure for selection of candidates for undergoing the training is prescribed, which includes written examination. Petitioners though belonging to the State of Assam did not come forward to undergo the training by following the harder route, but instead have come through the State of Arunachal Pradesh without undergoing any selection process as would have been the case had the petitioners opted for candidature from the State of Assam. In such circumstances, insertion of the impugned stipulations cannot be faulted.

11. In his reply submission, Mr. Borgohain, learned counsel for the petitioners while reiterating his submissions, also placed reliance on a decision of the Apex Court in the case of Kailash Chand Sharma v. State of Rajasthan & Ors., reported in (2002) 6 SCC 562 in support of his contention that impugned stipulations are arbitrary and unconstitutional.

12. Submissions made by learned counsel for the parties have been considered.

13. The two impugned stipulations find place in the communication dated 09.05.2014 of the Revenue and Disaster Management Department, Govt. of Assam addressed to the Director of Land Records and Surveys, Assam.

14. Relevant portion of the said communication dated 09.05.2014 is extracted hereunder: -

"2. Such candidates under deputation from the Govt. of Arunachal Pradesh will not be eligible for jobs like Lot Mandal/Amin etc. in the State of Assam.

3. While issuing Pass Certificate of the candidates by the Director of Land Record & Surveys, a line is to be posted in the certificate viz "This certificate will not enable the holder for job of Recorder/Lot Mandal/Amin under the Govt. of

Assam."

15. Question for consideration is to the legality and validity of the two conditions/ stipulations mentioned in the communication dated 09.05.2014 as extracted above. The two conditions are that candidates under deputation from the Govt. of Arunachal Pradesh would not be eligible for jobs like Lot Mandal/Amin in the State of Assam; and while issuing Pass Certificate of such candidates by the Director of Land Records and Surveys, one line should be incorporated in the certificate to the effect that the certificate holder would not be entitled to the job of Recorder, Lot Mandal/Amin etc. under the Govt. of Assam.

16. Though not expressly stated by the respondents, implicit in the insertion of such stipulation and support thereto is the underlying objection to the nomination of the petitioners by the Govt. of Arunachal Pradesh on the ground that they are permanent residents of Assam and not of Arunachal Pradesh but as already mentioned above, nomination of the petitioners to undergo the training course by the State of Arunachal Pradesh has not been challenged. State of Arunachal Pradesh has also not cancelled their nominations. Rather, learned State Counsel has stood by the nominations. Therefore, this Court is not required to go into that aspect of the matter. All that the Court is required to consider is the legality and validity of the two conditions as mentioned above.

17. The Assam Survey and Settlement Training Centre (AS & STC) Rules, 1992 regulates such training for Mandals etc. While candidates deputed by other States are also admitted into the Centre, there is nothing in the said Rules to suggest exclusion of such candidates from recruitment in the State of Assam.

18. As per Article 14 of the Constitution of India, the State shall not deny to any person equality before the law or equal protection of the laws. Article 15 prohibits discrimination of any citizen on grounds of religion, race, caste, sex or place of birth.

19. Article 16 of the Constitution of India provides for equality of opportunity in matters of public employment. Clause (2) specifically provides that no citizen shall be rendered ineligible or discriminated against in respect of any employment or office under the State on the ground of religion, race, caste, sex, descent, place of birth, residence or any of them.

20. The Apex Court in a catena of judgments, which may not require elaboration, has held time and again that there can be no discrimination between groups of citizens on the ground of residence or place of birth.

21. In Kailash Chand Sharma (supra), which was a case relating to award of bonus marks to candidates belonging to the concerned district and rural areas of the said district for the purpose of recruitment of teachers in Panchayat Schools, the Apex Court reiterated that whatever be the reason, residence by itself - be it within a State, region, district or lesser area within a district cannot be a ground to accord preferential treatment or reservation, save as provided in Article 16(3).

In the said judgment, the Apex Court undertook a brief analysis of Article 16 before issuing such direction.

22. Coming to the facts of the present case, no express reason or justification has been given for debarment of the petitioners from employment in the State of Assam against the post of Lot Mandal/Amin etc. The affidavit is also silent in this regard. On the face of the two stipulations, it is more than evident that it clearly offends Articles 14, 15 and 16 of the Constitution of India and cannot be sustained. Being citizens of India, petitioners are entitled to participate in any recruitment process in any part of the country subject to their over-all eligibility.

23. That being the position, impugned conditions as contained in the communication dated 09.05.2014 are hereby set aside and quashed. Consequentially, respondents are directed to issue the Recorders Certificate Class Course Training certificate to the petitioners within a period of 30 days from the date of receipt of a certified copy of this order.

24. Writ petition is allowed. No costs.